IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 2613 OF 2005

ASHWINI CO-OP. HOSPITAL & RESEARCH CENTRE .. PETITIONER

Versus

NARAYAN MURLIDHAR GAMBHIRE .. RESPONDENT

Mr. Girish S. Godbole for petitioner

Mr. Pankaj J. Das for respondent

CORAM:-SMT. RANJANA DESAI, J.

DATED:- 31/3/2006

P.C.

. Rule. Respondent waives service. By consent of the parties taken up for hearing forthwith.

2. The petitioner is the original defendant in Special Civil Suit No. 150 of 2005 pending in the court of Civil Judge, Senior Division, Solapur.

3. The respondent plaintiff has filed the said suit for perpetual injunction restraining the defendant from taking possession of the suit premises from him without due process of law and restraining the defendant from disturbing or

obstructing his possession of the suit premises in any manner.

4. The suit premises are a telephone booth. Its area is about 25 sq. ft. and it is owned by the defendant. In the suit the plaintiff filed an application for temporary injunction praying that his possession should not be taken by the defendant illegally till the decision of the suit and also praying that his possession should not be disturbed in any manner. His application came to be rejected by the trial court. Being aggrieved by the said rejection he carried an appeal in the District Court, Solapur. The said appeal came to be allowed and hence this writ petition by the petitioner-defendant.

5. I have heard at some length Mr. Godbole, the learned counsel appearing for the petitioner-defendant and Mr. Das, the learned counsel appearing for the respondent-plaintiff.

6. Mr. Godbole contended that the plaintiff’s claim for tenancy is totally fraudulent. He took me through various documents in support of his submission that the plaintiff was allowed to occupy

the suit premises only as a licensee. He submitted that the intention of the parties was only to create a licence and this is evident from the fact that the plaintiff has even participated in the tender proceedings initiated by the defendant. Mr. Godbole contended that the lower appellate court has fallen into an error in relying upon the first agreement dated 23rd July, 2000 to come to the conclusion that the plaintiff is a tenant in respect of the suit premises. He submitted that Shri Surwase, who is a party to the said agreement was not authorised by the Managing Committee to enter into the said agreement and in any case all the subsequent documents indicate that the plaintiff was occupying the suit premises as a licensee. All the relevant documents have been overlooked by the lower appellate court. Therefore, according to Mr. Godbole, the impugned order deserves to be set aside.

7. As against this Mr. Pankaj Das, the learned counsel for the respondent-plaintiff contended that the impugned order is well reasoned and merits no interference. He submitted that the agreement dated 23/7/2000 clearly establishes creation of tenancy. He pointed out that in all the receipts

the word rent is found which clearly establishes the case of tenancy. The learned counsel contended that it is true that the plaintiff has participated in the tender proceedings and has also signed on some documents which may indicate creation of licence but the plaintiff was forced into signing the said documents and, therefore, that cannot be taken against him. The learned counsel urged that the impugned order is perverse and deserves to be set aside.

8. No doubt agreement dated 23/7/2000 mentions that in respect of suit premises a rent @ Rs.250/- per month was to be paid and that the suit premises were given on rent to the plaintiff. Prima facie it does not appear that Mr. Surwase who has signed the said agreement on behalf of the defendant was authorised by the managing committee to enter into it. No resolution of the managing committee is mentioned in the body of this agreement. Besides subsequent agreement dated 23/3/2001 indicates that the plaintiff was a licensee. The word royalty is mentioned in this subsequent agreement.

9. It is also pertinent to note that a letter dated 2/9/03 came to be addressed by the defendant

to the plaintiff intimating to him that in view of the objection raised by the auditors tenders have been invited by the defendant. He was asked to communicate whether he had any objection. On a copy of this letter he has noted that he has no objection for the defendant inviting tenders. He has signed below the said endorsement.

10. It appears that thereafter notice was issued and tenders were invited. In fact the plaintiff participated in the tender proceeding. He paid an amount of Rs.500/- as deposit. A copy of the receipt issued to him has been shown to me. Since the offer given by the plaintiff was the highest he was allowed to conduct the business from 1/1/04 to 31/12/04 on a royalty of Rs.2,000/- per month. A copy of this agreement dated 1/1/04 has also been shown to me. It appears that thereafter after the period of agreement under which the plaintiff was conducting the STD Booth was over fresh tenders were invited. A meeting was arranged in respect of the same on 31/12/2004. The plaintiff participated in the tender process and deposited Rs.25000/- towards the tender while submitting the tender form. Notice of the meeting was accepted by the plaintiff and he in fact remained present at the

meeting. He participated in this tender also. However, one Sanjiv Chavan's offer being the highest and suitable was accepted and the offer of the plaintiff being below Chavan's offer was not accepted. The plaintiff, therefore, was asked to take back the deposit amount. The plaintiff accordingly received the said amount of Rs.25,000/-. Thereafter the defendant has entered into an agreement with the said Sanjiv Chavan and Sanjiv Chavan has been conducting the said telephone booth from 1/3/2005. The said agreement dated 25/2/05 is for a period of two years and is due to expire on 28/2/07.

11. In my opinion, in the face of the above circumstances, it is not possible to grant the plaintiff's application for interim injunction. Prima facie it appears to me that barring the first agreement there are no other documents which would substantiate the plaintiff's claim. It is also debatable whether the first agreement binds the defendant. Besides Sanjiv Chavan who is atpresent conducting the business and is in the suit premises is not made party to the suit. Hence by an injunction order the possession of Sanjiv Chavan who is not a party to the suit can certainly not be

disturbed. Whether the plaintiff has signed all the documents which indicate creation of a license under force, coercion or because of misrepresentation can only be decided in the suit. The suit needs to be expedited.

12. On 29/4/05 while issuing notice before admission this court has passed the following order:

. "Heard. Notice before admission. Mr. Das waives service for the respondents. He seeks time to take instructions. Time granted.

. S.O. for one week.

. Status quo as on today in respect of the subject telephone booth be maintained until further orders".

. In my opinion, this order which is in the field from 29/4/05 must operate during the pendency of the suit. Hence impugned order is set aside. Suit is expedited. Interim order dated 29/4/05 passed by this court quoted hereinabove to operate during the pendency of the suit. Nothing said by me in

this order should be treated as final opinion expressed by me on the issues involved in the instant suit. Writ petition is disposed of.

(SMT. RANJANA DESAI,J.)